

Remarks

Claims 24 and 40 have been further clarified. Support for the amendment to Claims 24 can be found in the specification on page 2, lines 5–19. Support for Claim 40 can be found in the specification on page 2, lines 12-19, page 7, lines 3–6; page 12, lines 2–4; and page 15, lines 13–38. Thus, no new matter has been added.

Claims 24, 26-28, 31-35 and 37-40 were rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. It was stated on page 2 of the Office Action that the recitation of “a disease resistance mediating Mlo polypeptide” is unclear because “mediating” is not defined and it was not clear what function was intended.

The term “disease resistance mediating Mlo polypeptide” has been deleted. Claims 24 and 40 now recite “a polypeptide of a Mlo protein....., wherein said polypeptide has fungal disease resistance activity when expressed in a plant”.

Accordingly, withdrawal of the rejection of the claims under 35 USC §112, second paragraph, is respectfully requested in view of the above amendments.

Claims 24, 26-28, 31-35 and 37-40 were rejected under 35 USC § 101 on the ground that “the claimed invention is not supported by either a substantial asserted utility or a well established utility.”

The claims have been amended to recite a “polypeptide of a Mlo protein..... wherein said polypeptide has fungal disease resistance activity when expressed in a plant”. This is believed to render moot the rejection of claims to “a disease resistance mediating Mlo polypeptide” as lacking a clear function.

Claims 24, 26-28, 31-35 and 37-40 were rejected under 35 USC §112, first paragraph, on the grounds that the claimed invention is not supported by either a substantial asserted utility or a well established utility and therefore one skilled in the art clearly would not know how to use the claimed invention and that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

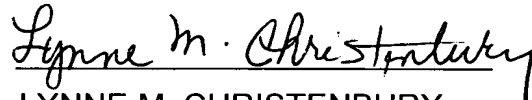
Claim 40 has been amended to recite as having “ a reduced level of the Mlo polypeptide, rather than”reduced expression of the Mlo polypeptide”.

Thus, it is respectfully submitted that one skilled in the art would know how to use the claimed invention and also reasonably conveys to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

It is respectfully submitted that the claims are now in form for allowance which allowance is respectfully requested.

Please charge any fees or credit any overpayment of fees which are required in connection with the filing of this Response Deposit Account No.: 04-1928 (E. I. du Pont de Nemours and Company).

Respectfully submitted,



LYNNE M. CHRISTENBURY
ATTORNEY FOR APPLICANTS
REGISTRATION NO.: 30,971
TELEPHONE NO.: 302-992-5481
FACSIMILE: 302-892-1026

Date: December 19, 2003